

Board of Pharmacy
Initial Statement of Reasons

Subject Matter of Proposed Regulation: Disciplinary Guidelines

Section Affected: Section 1760

Problem Addressed

The Pharmacy Act (Business and Professions Code sections 4000 et seq.) authorizes the Board of Pharmacy to establish and implement rules and regulations regarding the practice of pharmacy as may be necessary for the protection of the public. Government Code Section 11425.50(e) states that a penalty in an administrative disciplinary action may not be based on a guideline unless it has been adopted as a regulation in accordance with the Administrative Procedure Act.

In 1997 the board adopted its disciplinary guidelines and those guidelines are currently in regulation form. They are incorporated by reference in California Code of Regulations section 1760 and contain some drafting errors that were overlooked at the time of adoption. Moreover, subsequent use of these guidelines (e.g., by defense attorneys, licensees, board staff, deputies attorney general, administrative law judges and board members) and the difficulty in doing so during the course of disciplinary proceedings, has demonstrated the necessity for a reordering of various sections into a document that is more logically formatted by license type and generally more user-friendly. In addition there have been changes to Pharmacy Law that are not reflected in the existing guidelines.

The board has determined that this difficulty in using the guidelines has been prolonged by the board's delay in taking remedial action to correct the inadequacies of the initial guidelines. Further, it has determined that future, unanticipated problems arising when the guidelines are used can be alleviated by subjecting the guidelines to periodic review and update. This proposal is the first such action and is consistent with the board's commitment to assuring that the parties who rely upon the guidelines have the best possible resource.

The proposed regulatory amendment is based upon the board's desire to 1) overcome the problems experienced by those who use the guidelines due to the structure of the text, 2) incorporate law changes and 3) correct drafting errors contained in the original document incorporated by reference in its 1997 regulatory adoption.

Specific Purpose of the Regulation

The board uses disciplinary guidelines when taking action to suspend, revoke or place a license on probation. The purpose of this proposal is replace the existing disciplinary guidelines incorporated by reference in regulation form with an updated and user-friendly document that is consistent with

requirements of Government Code section 11425.50(e).

In order to provide a logical and straightforward document to those who must use these guidelines, the board proposes to repeal the existing Disciplinary Guidelines (Rev. 1/22/97) that are incorporated by reference in existing section 1760 and to replace the entire text with Disciplinary Guidelines (Rev. 1/2001) to be incorporated by reference with this action.

This action of repeal and replacement is designed to afford the affected parties ease in reviewing the proposed language.

Factual Basis

Pursuant to Business and Professions Code section 4005 the Board of Pharmacy has the authority to promulgate regulations to regulate the practice of pharmacy.

The board has a mandate to protect the health, safety and welfare of California consumers. The board's enforcement program provides effective consumer protection through the investigation of complaints and the resulting disciplinary action taken against licensees and applicants for licensure who have jeopardized the health and safety of consumers.

Section 4300 directs the board to discipline a licensee who has been found guilty of a violation of pharmacy law either by default, or as a result of a hearing. While the methods of discipline are listed, not all violations of California Pharmacy Law warrant the most stringent punishment listed -- revocation. The range of penalties including suspension and probation are appropriate in those instances when the nature and severity of the offense warrants lesser action by the board.

Section 4301 directs the board to take action against any holder of a license whose license has been procured by fraud or misrepresentation or issued by mistake. Further the above-referenced section directs the board to take action against any licensee who is guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to, the following:

- Gross immorality;
- Incompetence;
- Gross negligence;
- Clearly excessive furnishing of controlled substances in violation of the Health and Safety Code;
- Commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption; and
- Use of controlled substances, drugs or alcohol in such a manner as to be dangerous or injurious to a person licensed by the board or to the public.

Unprofessional conduct also includes the conviction of a crime substantially related to the qualifications, functions and duties of a licensee under pharmacy law.

The board's disciplinary guidelines are intended to assist an administrative law judge and board members in imposing the most appropriate penalty when a licensee has been found guilty of violating the law. In addition, a licensee who is the subject of disciplinary action and his or her legal counsel must have access to the guidelines that are used in the determination of penalties or in structuring a proposed stipulated

settlement offered by the board.

The board desires to provide all parties who must use the guidelines, as well as those parties who rely upon the guidelines for information, with a document that is straightforward and accurately represents the possible actions that may be taken in a disciplinary matter.

Underlying Data

"Disciplinary Guidelines" (Rev 1/22/97)

Business Impact

This regulation would not have significant adverse economic impact on businesses.

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No alternative which was considered would be either more effective than or equally as effective and less burdensome to affected private persons than the proposed regulation.

(11/20/00)